

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
)
COUNTY OF MARION)**

**DIANE S. HOOTEN,
Complainant,**

**DOCKET NO. EMra80030375
EEOC NO. 053801296**

vs.

**AMERICAN DIVERSIFIED FOODS, INC.,
D/B/A ARBY'S
Respondent.**

ORDER

Comes now Complainant, Diane S. Hooten ("Hooten"), by counsel, and files her Request for Withdrawal Without Prejudice, which Request is in words and figures as follows:

(H.I.)

And comes now Respondent, American Diversified Foods, Inc. d/b/a Arby's ("ADF"), by counsel, and files Respondent's Memorandum in Opposition to Complainant's Request for Withdrawal Without Prejudice, which Memorandum is in words and figures as follows:

(H.I.)

And comes now the Indiana Civil Rights Commission ("ICRC"), having considered the above and being duly advised in the premises, and finds and rules as follows:

1. Hooten has shown no reason why ICRC's discretion should be exercised in her favor.

2. ADF, on the other hand, has shown that it has expended considerable time and effort in preparing to defend this case, which may be wasted if Hooten's Request were granted.

IT IS, THEREFORE, ORDERED

1. Hooten's Request for Withdrawal Without Prejudice should be, and the same hereby is, denied.

Dated: December 17, 1981

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
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COUNTY OF MARION)**

**DIANE S. HOOTEN,
Complainant,**

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vs.

**AMERICAN DIVERSIFIED FOODS, INC.,
D/B/A ARBY'S
Respondent.**

FINDING OF FACT, CONCLUSIONS OF LAW, AND ORDER

Comes now Robert D. Lange, Hearing Officer for the Indiana Civil Rights Commission ("ICRC") and enters his Recommended Findings of Fact, Conclusions of Law, and Order (hereinafter "the recommended decision"), which recommended decision is in words and figures as follows:

(H.I.)

And comes not any party filing objections to said recommended decision within the ten (10) day period prescribed by IC 4-22-1-12 and 910 IAC 1-12-1(B).

And comes now ICRC, having considered the above and being duly advised in the premises and adopts as its final Findings of Fact, Conclusions of Law, and Order recommended by the Hearing Officer in the recommended decision, a copy of which is attached hereto and incorporated by reference herein.

Dated: February 12, 1982

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
)
COUNTY OF MARION)**

**DIANE S. HOOTEN,
Complainant,**

**DOCKET NO. EMra80030375
EEOC NO. 053801296**

vs.

**AMERICAN DIVERSIFIED FOODS, INC.,
D/B/A ARBY'S
Respondent.**

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On October 23, 1981, the undersigned Hearing Officer issued an order ruling that the question of whether the discharge of Complainant, Diane S. Hooten ("Hooten") by Respondent American Diversified Foods, Inc. d/b/a Arby's ("ADF") violated the Indiana Civil Rights Law, IC 22-9-1, was a question which was not properly before the Indiana Civil Rights Commission ("ICRC") under the circumstances existing in this case. Said Order stated that its contents would be incorporated into Recommended Findings of Fact, Conclusions of Law, and Order to be entered at the close of proceedings before the Hearing Officer.

A hearing was scheduled for January 8, 1982 to consider the remaining issues. On that date, Hooten was not present but was represented by counsel, Mr. R.J. Tavel of the City of Indianapolis. ADF was also represented by counsel, Wayne O. Adams, III and Joseph H Hogsett, also of the City of Indianapolis. Also present on behalf of ADF were Ronald P. Hampton, Vice President of Manpower Development and Robert Stancombe, who was Director of Management during Hooten's employment with ADF.

Hooten did not introduce any evidence, contending that the case had been removed to the United States Equal Opportunity Commission ("EEOC"), thereby depriving ICRC of subject matter jurisdiction. ADF then moved for a finding in its favor, contending that Hooten had failed to meet her burden of proving that ADF had committed a violation of the Indiana Civil Rights Law.

The Hearing Officer granted said motion, stating that a Recommended Decision would be entered in due course and advising the parties of the procedure through which such orders became final and their rights to object thereto pursuant to IVC 4-22-1-12 and 910 IAC 1-12-1(B).

Being duly advised in the premises, the Hearing Officer now recommends that ICRC enter the following Findings of Fact Conclusions of Law, and Order.

FINDINGS OF FACT

1. On December 31, 1980, the Director of the Indiana Civil Rights Commission ("ICRC") entered a Finding of No Probable Cause ("NPC") as to the allegation in the instant complaint that the termination of Complainant Diane S. Hooten ("Hooten") by Respondent American Diversified Foods, Inc. d/b/a Arby's ("ADF") was in violation of the Indiana Civil Rights Law. (Said Finding also found that there was Probable Cause as to Hooten's allegation of what may be termed "sexual harassment" by ADF.)
2. On January 9, 1981, the Director sent a letter to Hooten ("the notification letter"), enclosing said Finding. Hooten received said letter and Finding.
3. Paragraphs three (3) and four (4) of said notification letter to read as follows:

Regarding the finding of No Probable Cause, please be advised that the decision may be appealed within fifteen (15) days upon receipt of this letter. A timely appeal must be submitted in writing to the Commission and Objections must be stated as specifically as possible.

Regarding the finding of Probable Cause please be advised that as the next step in processing this matter you will be contacted by a staff

attorney, who will be seeking to ascertain (1) whether you wish to proceed with this Complainant (*sic*) and (2) if so, whether you wish to be represented by a staff attorney, a private attorney, or represent yourself. It is extremely important that you respond promptly and fully to these inquires.

4. Hooten did not appeal [or, in the language of the rule, “request reconsideration of”, see 910 IAC 1-3-2(D)] said Finding within the fifteen (15) day period after receipt thereof allowed by ICRC’s Rule.

5. While the notification letter quoted above may not be perfect in all respects, it quite plainly advised Hooten that the NPC finding must be appealed within fifteen (15) days of its receipt. Hooten thus had notice of her right to appeal.

6. Even if Hooten misconstrued the latter of the quoted paragraphs as some form of indication that a staff attorney would contact her regarding an “appeal”, as said period neared its expiration, she was at the very least under the obligation to inquire as to who this staff attorney was and to pursue the questions of whether and how to appeal. There is no evidence of such an inquiry.

7. There is no evidence that DF denied Hooten equal opportunity because of race or sex,

8. Any Conclusion of Law which should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The notification letter previously referred to is required to be sent by 910 IAC 1-3-2(D) and is, therefore, a “paper filed” and part of the record in this cause. IC 4-22-1-9.

2. The question of the propriety under the Indiana Civil Rights Law of Hooten’s termination is not properly before ICRC because of Hooten’s failure to request reconsideration in a timely fashion under 910 IAC 1-3-2(D)

a. Hooten's claim that denying her a hearing as a result of her failure to timely appeal the NPC Finding deprives her of due process of law is unpersuasive. Hooten had notice of the need to timely file an appeal and had she done so, she would have been heard. That her failure to do so caused her not to be heard does not detract from the fact that she had the opportunity.

b. ICRC may not waive or otherwise modify an applicable Regulation except to the extent specifically authorized by the Indiana Civil Rights Law 910 IAC 1-2-1(A). There is no provision in the statute authorizing ICRC to waive or modify the Regulation at issue.

c. One of the public policies of the State of Indiana is "... to protect employers ... from unfounded charges of discrimination...". IC 22-9-1-2(c). ICRC has effectuated this policy through the exercise of its rule making power, IC 22-9-1-6(c), by establishing as a condition precedent to a trial-type adjudication that a finding of Probable Cause is made. A means to appeal findings adverse to Complainant is also provided. 920 IAC 1-3-2(D). To allow Hooten to litigate as to the termination issue after failing to file an appeal in conformity with the Rule would emasculate the Rule and determine the public policy.

d. Hooten also suggests that she should be allowed to litigate the termination issue because doing so would contribute to the efficacious enforcement of the important policies underpinning Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e ("Title VII"). This suggestion is untenable because Title VII did not and could not grant power to ICRC whose authority must come from the General Assembly. *Indiana Civil Rights Commission v. Holman* ____ Ind. App. ____, 380 N.E.2d 1281 (1978). Indeed Title VII requires resort to state agencies only if authorized to grant or seek relief by state laws. 42 U.S.C. §2000e-5(c).,

3. When EEOC assumes jurisdiction of a complaint previously deferred to a state agency such as ICRC, the agencies have concurrent jurisdiction. *New York Gaslight Club, Inc. v. Carey*. ____ U.S. ____, 100 U.S. 224, 22 FEP Cases 1642 (1980).

4. ADF has not committed an unlawful discriminatory practice or other violation of the Indiana Civil Rights Law against Hooten.

5. When, after a hearing, ICRC finds that a person has not committed a discriminatory practice or other violation of the Indiana Civil Rights Law against Hooten.

6. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

1. Hooten's Complaint should be, and the same hereby is, dismissed.

Dated: January 19, 1982

